

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1832

Introduced by Assembly Member Saldana

January 23, 2008

An act to repeal Chapter 250 of the Statutes of 1913, and to repeal Chapters 642 and 808 of the Statutes of 1929, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 1832, as amended, Saldana. Tidelands and submerged lands: City of San Diego.

Under existing law, various grants of tidelands and submerged lands have been made in trust to local agencies, including several grants of specified tidelands to the City of San Diego. Existing law provides that certain tidelands granted to the City of San Diego ceased to be tidelands and were free from all trusts and restrictions, subject to specified conditions. Existing law also authorized local agencies that had been granted tidelands and submerged lands to grant some or all of those lands to the United States for public or governmental use.

This bill would repeal the provisions freeing former tidelands granted to the City of San Diego from use restrictions *and would specify that the repeal of those provisions shall not be construed to overturn or nullify the decision of a federal district court concerning certain tidelands in the City of San Diego or any title settlement agreement entered into by the state.* ~~This~~ The bill would also repeal local agency authorization to grant tidelands and submerged lands to the United

States, as provided. The bill would ~~specify that the repeal of these provisions shall not be construed to overturn or to nullify the decision of a federal district court concerning certain tidelands in the City of San Diego or any title settlement agreement entered into by the State of California acting through the State Lands Commission.~~ *require the State Lands Commission to represent the state and to cooperate in resolving title and boundary issues involving tidelands and submerged lands.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Sections 3 and 4 of Article X of the California Constitution,
4 formerly Sections 2 and 3 of Article XV of the California
5 Constitution, were adopted both to protect the state's waterways
6 and promote public access to those waterways.

7 (b) The state's sovereign interests in tidelands, submerged lands,
8 and the beds of nontidal navigable waters, whether filled or
9 unfilled, are held in trust to be protected as public trust lands
10 pursuant to the California Constitution and the common law public
11 trust doctrine.

12 (c) As trustee of California public trust lands, the state has a
13 duty to protect and promote public access to, and use of, these
14 lands for trust purposes, including, but not limited to, maritime
15 commerce and commercial and recreational navigation and fishing.

16 ~~(d) In the early days of statehood, the Legislature enacted laws~~
17 ~~authorizing the sale of certain tidelands into private ownership and~~
18 ~~the transfer of public trust lands to the United States.~~

19 ~~(e) In many instances California courts have either struck down~~
20 ~~the legislation authorizing the sale of public trust lands or found~~
21 ~~that the sale and transfer of the land did not terminate the public~~
22 ~~trust interest in the lands sold or transferred.~~

23 ~~(f) Since Chapter 573 of the Statutes of 1870, regarding the sale~~
24 ~~of tidelands within two miles of a city by the state, and the~~
25 ~~enactment of Chapter 444 of the Statutes of 1909, now Section~~
26 ~~7991 of the Public Resources Code, all tidelands have been~~
27 ~~withheld from sale statewide.~~

1 ~~(g) Chapter 700 of the Statutes of 1911 granted certain tide and~~
2 ~~submerged lands in trust to the City of San Diego, with the~~
3 ~~provision in Section 3 that “[n]o grant, conveyance or transfer of~~
4 ~~any character shall ever be made by the City of San Diego of the~~
5 ~~lands ... unless the same revert or be receded to the State of~~
6 ~~California.” Chapter 700 was subsequently amended on several~~
7 ~~occasions, including the amendments made by Chapter 642 of the~~
8 ~~Statutes of 1929.~~

9 ~~(h) Chapter 642 of the Statutes of 1929, amending Section 4 of~~
10 ~~Chapter 700 of the Statutes of 1911, declared all land shoreward~~
11 ~~of the bulkhead “to have ceased to be tidelands and to be free from~~
12 ~~all trusts and restrictions imposed on said lands under and by any~~
13 ~~of the provisions of this act, except that said city of its successors~~
14 ~~shall not at any time grant, convey, give or alien said lands, or any~~
15 ~~part thereof, to any individual, firm or corporation for any purpose~~
16 ~~whatsoever; provided, however, that the city of San Diego or its~~
17 ~~successors may lease, rent or otherwise let said lands ... for limited~~
18 ~~periods, not to exceed fifty years, with the right of the city to renew~~
19 ~~the same”~~

20 ~~(i) The Legislature also enacted Chapter 778 of the Statutes of~~
21 ~~1929, that terminated certain public trust use limitations on a parcel~~
22 ~~of filled tidelands and authorized the city and county to build a~~
23 ~~public administration thereon.~~

24 ~~(j) The California Supreme Court in Atwood v. Hammond~~
25 ~~(1935) 4 Cal.2d 31, at page 43, found that, as to the relatively small~~
26 ~~parcel at issue, it was not beyond the authority of the Legislature~~
27 ~~to allow a public administration building on that parcel. The court~~
28 ~~also stated that “it may well be that the inherent nature of the state’s~~
29 ~~title in tidelands and its duty to protect the public interest is such~~
30 ~~that it could not free from public interest all reclaimed lands” as~~
31 ~~provided in Chapter 642 of the Statutes of 1929, “without reserving~~
32 ~~any land for warehouses or other facilities [however] this question~~
33 ~~need not be decided in the cases herein” (Ibid.).~~

34 ~~(k) Between 1919 and 1940, the City of San Diego deeded~~
35 ~~several parcels of land in the city, including parcels within the area~~
36 ~~that is known today as the Navy Broadway Complex, to the United~~
37 ~~States for military and other governmental purposes. In 1990, the~~
38 ~~United States Navy decided to develop these lands for uses,~~
39 ~~including private commercial uses, and brought a quiet title action~~
40 ~~against the state and the San Diego Unified Port District.~~

~~(l) In a case involving the Navy Broadway Complex, the United States District Court for the Southern District of California in United States of America v. 15,320 Acres of Land (1991) U.S. Dist. LEXIS 21875, based its holding that no public trust interest existed in the lots conveyed to the United States by the City of San Diego within the complex on the language of Chapter 642 of the Statutes of 1929. The court stated that California's only hope to impose the use restrictions on the complex is "a ruling by this court that [Chapter] 642 is invalid" (Id., at p. 14). The court, however, declines to do so, as "dicta from Atwood notwithstanding, neither the California [L]egislature nor the California courts have held [Chapter] 642 invalid or beyond the powers of the Legislature" (Ibid.).~~

~~(m) The Legislature also enacted Chapter 250 of the Statutes of 1913 and Chapter 808 of the Statutes of 1929, authorizing cities to convey tide and submerged lands to the United States. These statutes were also relied upon by the court in United State of America v. 15,320 Acres of Land.~~

~~(n) The Legislature, subsequent to enactment of Chapter 642, continued to exercise control over the property by numerous statutory enactments evidencing the status of the property as public trust lands of the state, and provided for the transfer of all lands held in the City of San Diego pursuant to Chapter 700 of the Statutes of 1911, to the San Diego Unified Port District by Chapter 67 of the Statutes of 1962, First Extraordinary Session.~~

~~(o) The Legislature continues to exercise control over the property involved in Chapter 778 of the Statutes of 1929, as witnessed by the action taken by the Legislature by Chapter 482 of the Statutes of 1982.~~

~~(p) In order to clarify the legal status of filled tidelands and submerged lands that were the subject of Chapter 642, and thereby prevent any future misinterpretation of their status, it is the intent of the Legislature that Chapter 642 of the Statutes of 1929 shall not be construed as terminating the state's public trust interest in those lands or any other public trust lands in the state. It is also the intent of the Legislature to protect all public trust lands in the state from development inconsistent with the trust and to protect these lands from inappropriate transfers to the United States.~~

~~(d) Recognizing that the use of the state's tidelands and submerged lands by the United States has been beneficial to the~~

1 *state's economic interests and the nation's defense interests and*
2 *that the continued use of those lands is necessary for military and*
3 *naval defense purposes as set forth in Section 8 of Article I of the*
4 *United States Constitution, regarding the authority of Congress,*
5 *and in Section 2 of Article VI of the United States Constitution,*
6 *regarding federal supremacy, that authorize Congress to provide*
7 *for the military defense of the United States, nothing in this act*
8 *shall be construed to interfere with military operations or national*
9 *defense activities by the United States on public trust lands*
10 *acquired from the state or its trustees for military defense uses.*

11 SEC. 2. Chapter 250 of the Statutes of 1913 is repealed.

12 SEC. 3. Chapter 642 of the Statutes of 1929 is repealed.

13 SEC. 4. Chapter 808 of the Statutes of 1929 is repealed.

14 ~~SEC. 5. Sections 2, 3, and 4 of this act shall not be construed~~
15 ~~to overturn or to otherwise nullify the decision in the United States~~
16 ~~of America v. 15,320 Acres of Land (1991) U.S. Dist. LEXIS~~
17 ~~21875 or any title settlement agreement entered into by the State~~
18 ~~of California acting by and through the State Lands Commission.~~

19 SEC. 5. As authorized by existing law, including, but not limited
20 to, Sections 6210, 6222, 6301, 6307, and 6308 of the Public
21 Resources Code, the State Lands Commission shall represent the
22 state and cooperate with the state's local trustees and the United
23 States in resolving their respective title and boundary issues
24 involving tidelands and submerged lands, including, but not limited
25 to, those involved in the Base Closure and Realignment Law as
26 provided in subsection (d) of Section 2903 of the National Defense
27 Authorization Act for Fiscal Year 1994 (Public Law 103-160 (Nov.
28 30, 1993) 107 Stat. 1915).

29 SEC. 6. The repeal of Chapter 642 of the Statutes of 1929 shall
30 not be construed as overturning or otherwise nullifying the decision
31 in *United States of America v. 15,320 Acres of Land (1991) U.S.*
32 *Dist. LEXIS 21875* or any title settlement agreement entered into
33 by the State of California.

34 SEC. 7. Sections 2 and 4 of this act shall have no retroactive
35 effect.